Lim Lek Yan @ Lim Teck Yam v Yayasan Melaka and another application

FEDERAL COURT (PUTRAJAYA) — CIVIL APPLICATION NOS 08–14 OF 2008(W) AND 08–137 OF 2007(W)
ALAUDDIN PCA, ARIFIN ZAKARIA CJ (MALAYA) DAN ZULKEFLI FCJ
3 JUNE 2009

Civil Procedure — Appeal — Appeal to Federal Court — Whether Federal Court may hear leave application without benefit of written judgment of Court of Appeal — Whether absence of grounds of decision constituted basis for application for review

Civil Procedure — Jurisdiction — Federal Court — Principles governing power of review — Discretionary power vested with court — Whether very restricted jurisdiction — Whether review only to be allowed in fit and proper case — Rules of the Federal Court 1995 r 137

The respondent commenced an action at the High Court against Photran Corporation Sdn Bhd and the applicant for recovery of a loan. The senior assistant registrar had allowed the respondent's summary judgment application and the respondent's application to strike out the applicant's counterclaim. The learned High Court judge dismissed both appeals by the applicant. The Court of Appeal also dismissed both the applicant's appeals. The applicant's application for leave to appeal to the Federal Court was also dismissed. The applicant thus applied for review under r 137 of the Rules of the Federal Court 1995 ('RFC') claiming that the Federal Court was wrong in not adjourning the hearing of the application for leave to appeal pending the Court of Appeal's furnishing the grounds of its decision.

Held, dismissing the application with costs:

(1) The Federal Court's inherent power to review its earlier decision is a discretionary power vested with the court. This jurisdiction is indeed a very restricted or narrow one and must be exercised with caution otherwise it will open the flood gate for an unsuccessful party to apply for a review in every decision of the court. An application for a review should only be made in a fit and proper case (see para 16); *Asean*

Security Paper Mills Sdn Bhd v Mitsui Sumitomo Insurance (M) Bhd [2008] 2 MLJ 137; [2008] 6 CLJ 1, referred.

(2) What the Federal Court did was within its power or discretion. What it did was to consider the questions posed and then came to the conclusion that even if those questions were to fall within the ambit of s 96(a) of the Courts of Judicature Act 1964 there was no chance of success by the applicant in the appeal proper (see para 24); *Beatrice a/p AT Fernandez v Sistem Penerbangan Malaysia & Ors* [2005] 3 MLJ 681; [2005] 2 CLJ 713, followed.

(3) There is no such legal or procedural requirement that the Federal Court ought not to hear leave application without the benefit of the written judgment of the Court of Appeal. It all depends on each and every case whether written grounds of decision of the Court of Appeal is required or not. This is a matter falling solely within the discretion of the panel. Thus, the absence of grounds of decision alone could not constitute a basis for the Federal Court to call for review the decision of the earlier panel. There was nothing irregular or illegal in the proceedings before the earlier panel which rendered the earlier decision of the Federal Court to be invalid or unjust (see paras 25–26).

[Bahasa Malaysia summary

Responden memulakan tindakan di Mahkamah Tinggi terhadap Photran Corporation Sdn Bhd dan pemohon untuk mendapatkan pinjaman. Penolong kanan pendaftar membenarkan permohonan penghakiman terus responden dan permohonan responden untuk menolak tuntutan balas pemohon. Hakim Mahkamah Tinggi yang bijaksana menolak kedua-dua rayuan oleh pemohon. Mahkamah Rayuan juga menolak kedua-dua rayuan pemohon. Permohonan pemohon untuk kebenaran merayu ke Mahkamah Persekutuan juga ditolak. Oleh itu pemohon yang memohon untuk semakan di bawah k 137 Kaedah-Kaedah Mahkamah Persekutuan 1995 ('KMP') menghujah bahawa Mahkamah Persekutuan terkhilaf kerana tidak menangguhkan perbicaraan permohonan untuk kebenaran merayu sehingga Mahkamah Rayuan memberikan alasan-alasan penghakiman.

Diputuskan, menolak permohonan dengan kos:

(1) Kuasa sedia ada Mahkamah Persekutuan untuk menyemak keputusan sebelumnya merupakan kuasa budi bicara yang diberikan kepada mahkamah. Bidang kuasa tersebut adalah terhad dan perlu dilaksanakan dengan berhemat, jika tidak, ia akan membuka laluan kepada pihak yang tidak berjaya untuk memohon semakan dalam setiap tindakan mahkamah. Permohonan untuk semakan hanya boleh

dibuat dalam kes yang sesuai dan betul (lihat perenggan 16). *Asean Security Paper Mills Sdn Bhd v Mitsui Sumitomo Insurance (Malaysia) Bhd* [2008] 2 MLJ 137; [2008] 6 CLJ 1 dirujuk.

(2) Apa yang dilakukan oleh Mahkamah Persekutuan adalah terangkum dalam kuasa dan budi bicaranya. Apa yang dilakukannya ialah untuk mempertimbangkan persoalan yang dikemukakan dan membuat kesimpulan bahawa walaupun persoalan tersebut terangkum dalam linkungan s 96(a) Akta Mahkamah Kehakiman 1964, tidak terdapat peluang kejayaan untuk pemohon dalam rayuan sebenar (lihat perenggan 24). *Beatrice a/p AT Fernandez v Sistem Penerbangan Malaysia & Anor* [2005] 3 MLJ 681; [2005] 2 CLJ 713 diikut.

(3) Tidak terdapat keperluan undang-undang atau prosedur bahawa Mahkamah Persekutuan mesti membicarakan permohonan dengan faedah penghakiman bertulis Mahkamah Rayuan. Ia bergantung kepada setiap satu kes sama ada alasan-alasan penghakiman bertulis Mahkamah Rayuan diperlukan atau tidak. Ini merupakan perkara yang terangkum dalam budi bicara panel semata-mata. Oleh itu, ketiadaan alasan-alasan penghakiman bukan merupakan asas untuk Mahkamah Persekutuan menyemak keputusan panel sebelumnya. Tidak terdapat apa-apa yang di luar aturan dan menyalahi undang-undang dalam prosiding-prosiding di hadapan panel terdahulu yang membuatkan keputusan Mahkamah Persekutuan sebelumnya sebagai tidak sah atau tidak adil (lihat perenggan 25–26).]

Notes

For cases on appeal to Federal Court, see 2(1) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 749–756.

For cases on Federal Court's jurisdiction, see 2(1) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 4411–4415.

Cases referred to

Asean Security Paper Mills Sdn Bhd v Mitsui Sumitomo Insurance (M) Bhd [2008] 2 MLJ 137; [2008] 6 CLJ 1, FC (refd)

Beatrice a/p AT Fernandez v Sistem Penerbangan Malaysia & Ors [2005] 3 MLJ 681; [2005] 2 CLJ 713, FC (folld)

Board of Trustees of The Sabah Foundation & Ors, The v Datuk Syed Kechik bin Syed Mohamed & Anor [2008] 5 MLJ 469; [2008] 3 CLJ 221, FC (folld)

Capital and Suburban Properties Ltd v Swycher [1976] 1 All ER 881, CA (refd)

Chan Yock Cher @ Chan Yock Kher v Chan Teong Peng [2005] 1 MLJ 101; [2005] 4 CLJ 29, FC (refd)

Chu Tak Fai v PP [2007] 1 MLJ 201; [2006] 4 CLJ 931, FC (refd)

Development & Commercial Bank Bhd v Land Administrator, Wilayah Persekutuan & Anor [1991] 2 MLJ 180, SC (refd)

English v Emery Reimbold & Strick Ltd [2002] 3 All ER 385, CA (refd)
Ho Shee Chit v Bruusgaard Kisteruds Skibsaksjeselskap & Anor [1982] 2 MLJ 35; [1982] CLJ Rep 115, FC (refd)
Joceline Tan Poh Choo & Ors v V Muthusamy [2008] 6 MLJ 621; [2009] 1 CLJ 650, FC (refd)
Nyuk Fung & Ors v PanGlobal Equities Bhd [1991] 1 MLJ 152, SC (refd)
Ong Thye Peng v Loo Choo Teng & Ors [2009] 4 MLJ 472, FC (refd)
Regina v Harrow Crown Court, Ex p Dave [1994] 1 All ER 315, QBD (refd)

Legislation referred to
Courts of Judicature Act 1964 s 96, 96(a)
Rules of the Federal Court 1995 r 137
Rules of the High Court 1980 O 14, O 18 r 19

Appeal from: Civil Appeal No W-02–1208 of 2005 (Court of Appeal, Putrajaya)

YM Raja Aziz Addruse (Philip Choong with him) (Philip Choong & Co) for the applicant.
DP Naban (SM Shanmugam with him) (Lee Hishammuddin Allen & Gledhill) for the respondent.

Arifin Zakaria CJ (Malaya) (delivering judgment of the court):

INTRODUCTION

[1] This is an application for review under r 137 of the Rules of the Federal Court 1995 ('RFC') by the applicant vide Notice of Motion No (W)08–14 of 2008 (striking out of counterclaim under O 18 r 19 of the Rules of the High Court 1980). This notice of motion is in substance identical to the Notice of Motion No (W)08–15 of 2008 (summary judgment application under O 14 of the Rules of the High Court 1980). Therefore, the outcome of this notice of motion should bind the Notice of Motion No (W)08–15 of 2008.

BACKGROUND FACTS

[2] By an agreement dated 26 June 1997 ('the loan agreements') between Yayasan Melaka ('the respondent') and Photran Corp Sdn Bhd ('Photran'), the respondent granted Photran a loan of RM9.2m ('loan') free of interest. The loan was payable in 24 months from the date of the release of the balance of the loan ie 27 June 1997. By a 'shareholder letter of indemnity', dated 26 July 1997, Lim Lek Yan @ Lim Teck Yam ('the applicant'), a senior practicing lawyer, agreed to indemnify the respondent in respect of the repayment of the loan ('indemnity agreement').

A **[3]** Photran failed to settle the loan within the time stipulated in the loan agreement. On 17 March 2003, the respondent through its solicitors sent a notice of demand separately both to Photran and the applicant for the amount due. The respondent then commenced an action at the High Court to claim the amount due when neither Photran nor the applicant made any payment.

B

[4] The respondent filed an O 14 application for summary judgment and subsequently an application under O 18 r 19 to strike out the applicant's counterclaim.

C

[5] On 25 January 2005, the learned senior assistant registrar allowed the O 14 application and on 8 March 2005, the learned deputy registrar granted the respondent's application to strike out the applicant's counterclaim.

D

[6] On appeal to the learned judge in chamber, the applicant argued that Photran was induced and coerced into entering the loan agreement by illegitimate pressure brought to bear upon it by the respondent.

E

[7] On 25 October 2005, the learned High Court judge dismissed both the appeals by the applicant.

F **[8]** The applicant appealed to the Court of Appeal against the decisions of the High Court. On 12 June 2007, the Court of Appeal dismissed both the appeals. The decisions of the High Court were affirmed.

[9] The applicant applied for leave to appeal to this court. At the hearing **G** of the application for leave, the solicitors for the applicant applied for the matter to be adjourned on the ground that it would not be proper for the Federal Court to hear the application before the real points of law required by s 96 of the Courts of Judicature Act 1964 ('the Act') to be determined by the Federal Court could be framed.

H

[10] After hearing the arguments, the Federal Court dismissed the applications for leave on the ground that even if there were points of law falling within the ambit of s 96 of the Act, the application was bound to fail **I** in the appeal.

THE APPLICATION BEFORE US

[11] The applicant now made an application before us under r 137 of the

RFC to set aside the decision of the Federal Court given on 7 January 2008 on the following grounds:

(a) The Federal Court was acting in excess of jurisdiction in dismissing the application for leave as there had yet to be determined whether there were questions of general principle or questions of importance (failing within the scope of s 96(a) of the Act) which were raised by the decision of the Court of Appeal;

(b) That even if there were such questions raised which merited the determination of the Federal Court, it was not open to, and premature for, the Federal Court to dismiss the application was not likely to succeed if leave were granted;

(c) That by dismissing the application for leave in the circumstances it did, the Federal Court negated the applicant's statutory right of appeal to the Court of Appeal, which if it were to be meaningful, entitled him to be informed of the Court of Appeal's ground for dismissing his appeal;

(d) That the procedure adopted by the Federal Court in hearing the application for leave was manifestly unfair; and

(e) That an injustice has been done to the applicant, which this court, as the ultimate Court of Appeal, has the power to and ought to correct.

[12] Learned counsel for the applicant further submitted that the Federal Court was wrong in not adjourning the hearing of the application for leave to appeal pending the Court of Appeal's furnishing the grounds of its decision and, subsequently, in dismissing the application, for the following reasons:

(a) The expression 'judgment ... of the Court of Appeal in respect of the civil cause ...' in s 96 of the Act, read in the context of *Capital and Suburban Properties Ltd v Swycher* [1976] 1 All ER 881 and *Regina v Harrow Crown Court, Ex p Dave* [1994] 1 All ER 315, and considered by reference to the applicant's substantive right to appeal, cannot mean just the Court of Appeal's decision to dismiss the applicant's appeal per se; and the Federal Court, as the apex court, ought to have required the Court of Appeal to furnish its grounds of decision for the purpose of its considering the applicant's application to appeal to the Federal Court; and

(b) The Federal Court exceeded its jurisdiction when it held that even if the provisional questions of law posed by the applicant fell within the ambit of s 96, the applicant was not likely to succeed in its appeal to the Federal Court. The decision as to whether or not the applicant would succeed on appeal was one which should not be made until full arguments on the questions of law to be reserved had been made.

[13] He further submitted that in the circumstances, there had been a failure to do justice to the applicant, not only by the Court of Appeal but also by the Federal Court.

[14] Learned counsel for the respondent submitted that the Federal Court was right in law to dismiss the application for leave on the ground that the applicant was not likely to succeed even if leave were granted as the applicant failed to demonstrate that on the first impression, the appeal might succeed. He further said that the applicant primarily based their application for review on the ground that the Federal Court ought not to have proceeded with the hearing of the leave application on 7 January 2008 in the absence of the Court of Appeal's ground of judgment. But nowhere it is stated in the RFC that the Court of Appeal's ground of judgment is required before a leave application can be determined. Further, there is nothing in the Practice Directions which states that the Federal Court shall not hear the leave application in the absence of grounds of judgment from the Court of Appeal. He also cited the case of *Nyuk Fung & Ors v PanGlobal Equities Bhd* [1991] 1 MLJ 152, *Development & Commercial Bank Bhd v Land Administrator, Wilayah Persekutuan & Anor* [1991] 2 MLJ 180 and *Ho Shee Chit v Bruusgaard Kisteruds Skibsaksjeselskap & Anor* [1982] 2 MLJ 35; [1982] CLJ Rep 115, where the Supreme Court proceeded to hear cases without the benefit of written judgment.

[15] Learned counsel for the respondent in praying for the motion to be dismissed with costs further submitted that even if the Federal Court has the jurisdiction to review its own decision, but the authorities are clear that this jurisdiction must be exercised only in very rare and exceptional circumstances. In this case, he said that the applicant's cry for injustice is without basis. The Court of Appeal unanimously agreed with the High Court's findings and affirmed its decision. The Court of Appeal did not in any way interfere with the findings of the High Court. If the Court of Appeal disagrees with the High Court's findings, then the grounds of judgment would have been relevant for the leave application.

OUR FINDINGS

[16] It must be stated at the outset that this is not an appeal but an application to the court to exercise its inherent power to review the earlier decision of this court so as to prevent injustice or to prevent an abuse of the process of the court. This is a discretionary power vested with the court. But as it has often been stated this jurisdiction is indeed a very restricted or narrow one and must be exercised with caution otherwise it will open the flood gate for an unsuccessful party to apply for a review is allowed or dismissed by the court. And there is nothing to stop a party from applying

for further review after an application for a review is allowed or dismissed by the court. An application for a review should only be made in a fit and proper case. This court, in *Asean Security Paper Mills Sdn Bhd v Mitsui Sumitomo Insurance (M) Bhd* [2008] 2 MLJ 137; [2008] 6 CLJ 1 sets out the circumstances in which a review application may properly be entertained (see the judgment of Abdul Hamid Mohamad CJ and Zaki Tun Azmi PCA (as he then was)). However, both of them recognised that the circumstances that they set out are not meant to be exhaustive. Zaki PCA sets out the circumstances in which the review jurisdictions should be or should not be exercised by the court, namely:

(a) That there was a lack of quorum eg, the court was not duly constituted as two of the three presiding judges had retired (*Chia Yan Tek & Anor v Ng Swee Kiat & Anor* [2001] 4 CLJ 61);

(b) The applicant had been denied the right to have his appeal heard on merits by the appellate court (*Megat Najmuddin bin Dato Seri (Dr) Megat Khas v Bank Bumiputra (M) Sdn Bhd* [2002] 1 CLJ 645);

(c) Where the decision had been obtained by fraud or suppression of material evidence (*MGG Pillai v Tan Sri Dato' Vincent Tan Chee Yioun* [2002] 3 CLJ 567);

(d) Where the court making the decision was not properly constituted, was illegal or was lacking jurisdiction is not confined to the standing of the quorum that rendered the impugned decision (*Allied Capital Sdn Bhd v Mohd Latiff bin Shah Mohd and another application* [2004] 4 CLJ 350);

(e) Clear infringement of the law (*Adorna Properties Sdn Bhd v Kobchai Sosothikul* [2005] 1 CLJ 565);

(f) It does not apply where the findings of this court is questioned, whether in law or on the facts (since these are matters of opinion, which this court may disagree with its earlier panel) (*Chan Yock Cher @ Chan Yock Kher v Chan Teong Peng* [2005] 4 CLJ 29);

(g) Where an applicant under r 137 has not been heard by this court and yet through no fault of his, an order was inadvertently made as if he had been heard (*Raja Prithwi Chand v Sukhraj Rai* AIR 1941);

(h) Where bias had been established (*Taylor & Anor v Lawrence & Anor* [2002] 2 All ER 353);

(i) Where it is demonstrated that the integrity of its earlier decision had been critically undermined eg where the process had been corrupted and a wrong result might have been arrived at (*Re Uddin* [2005] 3 All ER 550); and

(j) Where the Federal Court allows an appeal which should have been consequentially dismissed because it accepted the concurrent findings of the High Court and the Court of Appeal (*Joceline Tan Poh Choo & Ors v V Muthusamy* [2007] 6 MLJ 485).

[17] This was followed by this court in the case of *Ong Thye Peng v Loo Choo Teng & Ors* [2009] 4 MLJ 472, Rayuan Sivil No 02–7 Tahun 2006(P). The approach to be adopted by the court in an application of this nature is well articulated by Abd Hamid Mohamad FCJ (as he then was) in *Chan Yock Cher @ Chan Yock Kher v Chan Teong Peng* [2005] 1 MLJ 101; [2005] 4 CLJ 29 at p 45 where he said:

> This case clearly shows the reluctance of this court to set aside its previous order made after the appeal was fully heard even though the first application that had been dismissed was grounded on 'coram failure' as one of the judges had retired prior to delivery of the judgment in the appeal, a situation which appears to be similar to *Chia Yan Tek*.
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> From the cases, it is clear that, so far, this court had only given orders that its previous decisions, judgments or orders be set aside and ordered that the appeals be re-heard when such decisions, judgments or orders were a nullity or invalid because the court giving such decisions, judgments or orders was not properly constituted.
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> We do not say that the circumstances under which this court would set aside its previous decisions, judgments or orders for the re-hearing of the appeals are closed. Neither do we intend to list down the circumstances that warrant such an order. However, to give two examples, there may be jurisdictional error, for example, where the court inadvertently heard and decided on an appeal which, in law, is patently not appealable to this court, or due to illegality where this court inadvertently imposed a sentence unknown in law or in excess of the maximum sentence permissible by law.
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> On the other hand, no leave to review should be given where the previous order is challenged on its merits, whether on facts or in law. Merely because the panel hearing the application is of the view that an important piece of evidence had not been given sufficient weight or that the current panel disagrees with the interpretation or application of a certain provision of the law is not a sufficient reason for the court to set aside its previous order.
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> The reason have been amply stated by this court in *Adorna Properties Sdn Bhd* with which we fully agree. The only other reason we would like to add is that to freely allow previous orders to be reviewed would lead to 'panel shopping'. An unsuccessful party in an appeal may try its luck before another panel that may disagree with the view of the earlier panel. If he is successful in having the order reversed, the other party will do the same thing again. Certainly, we would not like to see this apex court becoming a circus that repeats the same show again and again.

> Coming back to the present application. It has been seen that the applicant questions the findings of this court both in law and on facts. These are matters of opinion. Just because we may disagree (we do not say whether we agree or disagree with such findings) with the earlier panel of this court, that is not ground that warrants us to review the decision. Similarly, regarding the interpretation and application of some provisions of the Companies Act 1965, even if we disagree with the earlier panel (again we do not say whether we agree or disagree) that does not warrant us to set aside the judgment and the order of the earlier panel of this court and re-hear and review the appeal. Otherwise, as has been said, there would be no end to a proceeding.

[18] In *Chu Tak Fai v Public Prosecutor* [2007] 1 MLJ 201; [2006] 4 CLJ 931, this court again stated that even though this court has the jurisdiction and power to review its earlier decision under r 137 such an exercise can only be taken sparingly and in rare and exceptional circumstances.

[19] In the present case the applicant applied for leave to appeal under s 96(a) of the Courts of Judicature Act 1964 which reads:

> Subject to any rules regulating the proceedings of the Federal Court in respect of appeals from the Court of Appeal, an appeal shall lie from the Court of Appeal to the Federal Court with the leave of the Federal Court —
>
> (a) from any judgment or order of the Court of Appeal in respect of any civil cause or matter decided by the High Court in the exercise of its original jurisdiction; involving a question of general principle decided for the first time or a question of importance upon which further argument and a decision of importance upon which further argument and a decision of the Federal Court would be to public advantage; or
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> (b) from any decision as to the effect of any provision of the Constitution including the validity of any written law relating to such provision.

[20] For a detail discussion on the meaning to be given to s 96(a) see *Joceline Tan Poh Choo & Ors v V Muthusamy* [2008] 6 MLJ 621; [2009] 1 CLJ 650.

[21] In the application four questions were posed to the court as the questions of law that need to be answered. Even though the Court of Appeal had not delivered a written grounds of decision the applicant was able to formulate the questions for this court for the purpose of s 96(a). How the questions were formulated is not clear but we would presume it must have been premised on the grounds of decision of High Court with which the Court of Appeal fully agreed. Based on those questions this court came to the conclusion that leave ought not to have been granted. No grounds of judgment was given for the said refusal, and I must emphasise it is not

practice of this court to give written reasons for the decision in a leave application. It is not required by law or procedure to do so.

[22] We do, however, depending on the circumstances of the case, sometimes provide grounds for our decision even at the leave stage. But, as we said earlier, as a matter of practice we do not do so.

[23] In the present case it would appear from the submission of counsel for the applicant that the court dismissed the application on the ground that even if the points of law posed by the applicant fall within the ambit of s 96(a) the applicant was bound to fail in the appeal. In other words the applicant failed to show a prima facie case for success. On this issue, Augustine Paul FCJ in *Joceline Tan Poh Choo & Ors* said:

> The next matter for consideration is whether the point if decided in favour of the intending appellant will show that there is prima facie case for success in the appeal. This would depend on the issue to be raised in the appeal and, thus, on the nature and manner in which the question for appeal is framed. It must be so couched as to incorporate a point of law which has the effect of reversing findings made against the intending appellant without any further evaluation of the evidence. This in turn means that the answer given to the question must be such that it has the effect of reversing the judgment. It is only then that the question of success in the appeal can arise. It must be remembered that the very object of making appeals to this court subject to leave is to prevent frivolous and needless appeals (see *Kredin Sdn Bhd v OCBC Bank (Malaysia) Sdn Bhd* [1998] 2 CLJ 797). Leave to appeal on a proposed question will therefore not be granted if there is no hope of success (see *Beatrice a/p AT Fernandez v Sistem Penerbangan Malaysia & Ors* [2005] 3 MLJ 681; [2005] 2 CLJ 713).

[24] Therefore, what the court did in the present case was within its power or discretion. What it did was to consider the questions posed and then came to the conclusion that even if those questions were to fall within the ambit of s 96(a) there is no chance of success by the applicant in the appeal proper. This is also in line with the decision of this court in *Beatrice a/p AT Fernandez v Sistem Penerbangan Malaysia & Ors* [2005] 3 MLJ 681.

[25] On the further ground that this court ought not to have heard the leave application without the benefit of the written judgment of the Court of Appeal we are in agreement with learned counsel for the respondent that there is no such legal or procedural requirement. It all depends on each and every case whether a written grounds of decision of the Court of Appeal is required or not. This is a matter falling solely within the discretion of the panel. In a complex case we normally require the written grounds of judgment of the Court of Appeal and counsel for the applicant would invariably ask for the matter to be adjourned pending written grounds of

judgment of the Court of Appeal. There again it depends on the discretion of the panel whether to grant such adjournment or not. The court cannot lay down a hard and fast rule on this, as circumstances may vary from case to case. From my personal experience a number of leave applications were heard without the benefit of the grounds of judgment of the Court of Appeal especially where there was concurrent finding by both the High Court and the Court of Appeal. As stated by this court in *The Board of Trustees of The Sabah Foundation & Ors v Datuk Syed Kechik bin Syed Mohamed & Anor* [2008] 5 MLJ 469; [2008] 3 CLJ 221 there is no legal requirement for a delivery of a reasoned judgment in every case although it is a good practice to do so. The court quoted with approval what was said by Lord Phillips MR in *English v Emery Reimbold & Strick Ltd* [2002] 3 All ER 385 which reads:

> There is a general recognition in the common law jurisdictions that it is desirable for judges to give reasons for their decisions, although it is not universally accepted that this is a mandatory requirement — 'There is no invariable rule established by New Zealand case law that courts must give reasons for their decision,' per Elias CJ in *Lewis v Wilson & Horton Ltd* [2000] 3 NZLR 546.

[26] Thus, the absence of grounds of decisions alone could not in our view constitute a basis for us to call for review the decision of the earlier panel. In the circumstances of this case we find there is nothing irregular or illegal in the proceedings before the earlier panel which renders the earlier decision of this court to be invalid or unjust.

CONCLUSION

[27] For the above reasons we would, therefore, dismiss this application with costs. Deposit to respondent to account of taxed cost.

Application dismissed with costs.

Reported by Kanesh Sundrum